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# PSC 461.01: Administrative Law

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POLITICAL SCIENCE 461

Administrative Law

Fall 1998

Administrative law is the part of public law that deals with the work of public administrators. Its principles are closely related to the constitutional law doctrines of separation of powers and due process. The traditional divisions of administrative law are the delegation doctrine (the relationship of an agency to the legislature), judicial review (the relationship of an agency to the courts), rulemaking (the procedures an agency follows when it makes law), and adjudication (the procedures an agency follows when it resolves disputes). Newer concerns of administrative law are public access to the records of the agencies and the broad informal discretion of bureaucrats.

Text: Steven Cann, Administrative Law, 2<sup>nd</sup> edition.

|                            |                   |
|----------------------------|-------------------|
| Grade: Midterm examination | - 30% (60 points) |
| Final examination          | - 30% (60 points) |
| Essays                     | - 30% (60 points) |
| Attendance and discussion  | - 10% (20 points) |

A = 180-200 points  
B = 160-179 points  
C = 140-159 points  
D = 120-139 points  
F = 0 -119 points

Reading: approximately 15 pages per class meeting

Writing: Each student will write two analyses of problems that are parts of group projects and an annotated bibliography. Written work will be graded for content (clarity and validity) and writing quality (grammar, syntax, and logical development. Graduate students will serve as group leaders.

Format: Students are expected to complete reading assignments and participate in class discussion. Class discussion will concentrate on case principles, evolution of doctrine, and practical problems. The instructor will be discussion leader and will lecture as required.

Examination: The midterm examination date will be October 15. The final examination, which will cover material from the midterm to the end of the course, is scheduled for December 16 at 8:00 a.m. Both examinations will use definition questions to test knowledge of key principles and doctrines and short-essay questions to test analytical reasoning.

Instructor: Jim Lopach, LA 348, 243-4829

Political Science 461  
Administrative Law  
Annotated Bibliography Project

Write a paragraph on each of the following administrative law sources which discusses the work's purpose and organization, and gives an example of how a public administrator would use the source. For the Administrative Law Review (ALR) source, write a 1,000-word essay that is a summary and critique of an ALR article that pertains to the subject matter of the course. The annotated bibliography is due on September 29.

1. Session Laws of Montana (1), (2)
2. Montana Code Annotated (1), (2)
3. Montana Reporter (1), (2) or State Reporter (2)
4. Pacific Reporter (2)
5. Administrative Rules of Montana (1), (2)
6. United States Statutes at Large (1), (2)
7. United States Code (1), (2) or United States Code Annotated (2)
8. U.S. Reports (1), (2) or Supreme Court Reporter (2) or Lawyers' Edition of the U.S. Supreme Court Reports (2)
9. Federal Register (1), (2)
10. Code of Federal Regulations (1), (2)
11. American Jurisprudence (2) or Corpus Juris Secundum (2)
12. K. Davis, Administrative Law Treatise, 3rd edition (1994) (2)
13. Montana Administrative Procedure Act (MCA, 2-4-101) (1), (2)
14. Administrative Law Review (2)

The following two reference works are on reserve in the Mansfield Library and can be of assistance to you:

Cohen, How to Find the Law, West Publishing Company

Jacobstein and Mersky, Fundamentals of Legal Research, Foundation Press

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- (1) Available in the Mansfield Library.  
(2) Available in the Law Library.

PSc 461  
ADMINISTRATIVE LAW  
Draft Administrative Rules Project

Problem. The institutional setting is the Montana Board of Land Commissioners (MBLC). Assume that you work in a staff capacity for the Board and the Board has given you the assignment of implementing the rulemaking authorization in MCA 76-12-112 (attached). Accordingly, you are to draft for public hearing proposed rules governing natural areas on school trust lands from the perspectives of fee generation, recreational use, and conservation.

Work product. The work product is a draft of proposed rules concerning which the MBLC, prior to adoption, will hold a public hearing. Each team's product should be approximately eight to twelve manuscript pages (double-spaced, standard margins) and formatted as legislative rules. The draft rules should cover the following four or five topics: (1) over-night camping in natural areas; (2) hunting and fishing in natural areas; (3) water recreation in natural areas; (4) winter recreation in natural areas; and (5) hiking and nature viewing in natural areas. Assume that all five of these topics are within the MBLC's authority. Also assume that the MBLC's principal charge is generation of recreational fees. A "real" package of draft rules would include an introductory section concerning statutory authorization and intent, but this section is not part of your assignment.

Task assignment. Each student will work as a member of a team, as assigned by the instructor. Each team member will participate in group deliberation which will consist of planning the team's project, assigning research tasks (reading and interviewing), evaluating the writing of team members, and editing team members' drafts into an integrated unit. The writing of each team member should focus on one of the four or five separate sections of the final work product, should include the identity of its author, and should be at least two pages in length. In your draft rules, use "may" for the permissive and "shall" for the mandatory and use active instead of passive voice.

Sources. The following sources could be of use to you: interviews with employees of state agencies; pertinent sections of Administrative Rules of Montana, Code of Federal Regulations, and Montana Code Annotated; and a variety of studies and reports concerning natural resource management. Your work product may be derivative, but it may not be a verbatim lifting of existing state and federal regulations.

Due date. The work product is due on November 5.